

NELSON B. HUNT

IBLA 76-563

Decided November 4, 1976

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting appellant's geothermal lease offer, I-9856.

Reversed and remanded.

1. Geothermal Leases: Acreage Limitations -- Rule of Approximation

The special rule of approximation for geothermal lease offers is applied by subtracting from the total acreage of the offer the acreage of the irregular subdivision which caused the excess acreage. Where a geothermal lease offer describes four complete sections and the area embraced in the application exceeds the acreage limit because one or more of the sections is irregular, the offer may be considered if deletion of the irregular section (or one of them if there is more than one) would cause an acreage deficiency (acreage limit less acreage described in the offer) greater than the excess acreage resulting from inclusion of the section.

APPEARANCES: Nelson B. Hunt, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought by Nelson B. Hunt from a decision of the Idaho State Office, Bureau of Land Management (BLM), rejecting his geothermal lease offer (I-9856) in its entirety for the reason that the acreage described therein exceeds the limit provided by regulation and the offer does not qualify as an exception to the limit under the rule of approximation.

Appellant alleges in his statement of reasons on appeal that his lease offer is acceptable under the exception to the acreage limitation known as the rule of approximation. Appellant asserts that, in view of the requirement of the geothermal leasing regulations that an application for lands in a given section must embrace all lands located in that section which are available for geothermal leasing, the smallest legal subdivision which could have been omitted from the offer was an entire 640-acre section. Further, appellant asserts deletion of this acreage would create a deficiency (number of acres allowed less the number of acres applied for) greater than the excess resulting from inclusion of the additional section. Therefore, appellant argues, the offer is acceptable under the rule of approximation.

Appellant's geothermal lease offer embraced four entire sections of surveyed public domain at the time that the application was filed and at the time that the decision below was reached. It appears from the survey plat that all of the land embraced in the application was available for geothermal leasing. Subsequent to the time that the appeal was filed herein and while the case was under review by this Board, appellant filed a withdrawal of the application in part with respect to two of the sections described therein. Of the four sections originally described in the offer, two are regular (containing 640 acres each) and two are irregular. Parts of the irregular sections have been surveyed into lots. The two irregular sections have an area of 658.61 acres and 646.64 acres, respectively, causing the total acreage for the offer to be 2,585.25 acres.

A preliminary issue raised by appellant's partial withdrawal of the application while the appeal is pending is whether this withdrawal, which has the effect of bringing the acreage within the limit, renders the appeal moot. We hold that it does not. Caroline L. Hunt, 26 IBLA 218 (1976). If a noncompetitive geothermal lease is to be issued for lands not within a known geothermal resources area, it must be issued to the first qualified applicant for the land. 30 U.S.C. § 1003 (1970). Thus, priority of filing is critical to noncompetitive geothermal lease applications. A noncompetitive geothermal lease application which is defective because it embraces acreage in excess of the limit cannot gain priority from the time of filing. Consequently, even though the withdrawal is effective to delete the two sections involved from the offer as of the time the withdrawal was filed, the validity of the application at the time it was initially filed is still an issue. See Caroline L. Hunt, *supra*.

The principal issue raised by this appeal is whether the offer qualifies under the exception to the acreage limitation described as the rule of approximation for geothermal lease applications where exclusion of one of the irregular subdivisions would cause

a deficiency in acreage (acreage limit less acreage described in the offer) greater than the excess resulting from the inclusion of the subdivision.

Before discussing the rule of approximation as it applies to geothermal applications, it should be noted that the regulations governing geothermal leasing provide that an application for a lease:

[M]ust include all available lands, including reserved geothermal resources, within a surveyed or protracted section \* \* \*.

43 CFR 3210.2-1(c).

Therefore, a lease applicant must, if he chooses to apply for a geothermal lease for any subdivision of land in a given section, apply for the entire section where the entire section is available for leasing. Similarly, a subdivision of a section which is subject to leasing may not be deleted from the description in a lease application without invalidating the offer as to the balance of the land in that section.

The acreage limitation for geothermal leases is defined in the statute as follows:

A geothermal lease shall embrace a reasonably compact area of not more than two thousand five hundred and sixty acres, except where a departure therefrom is occasioned by an irregular subdivision or subdivisions.

30 U.S.C. § 1006 (1970).

The rule of approximation peculiarly applicable to geothermal lease offers is stated in the regulations:

Where a departure [from the acreage limitation] is occasioned by an irregular subdivision, the leased acreage may exceed 2,560 acres by an amount which is smaller than the amount by which the area would be less than 2,560 acres if the irregular subdivision were excluded.

43 CFR 3203.2(a).

[1] With respect to geothermal lease offers which embrace irregular subdivisions, the special rule of approximation is not applied by subtracting the smallest legal subdivision embraced in the application. Instead, the irregular subdivision is the unit

which must be used in applying the rule. The irregular subdivision used in applying the rule of approximation may consist of an entire irregular section. Caroline L. Hunt, supra at 221. This is a rational application of the rule where the lease offer embraces four complete sections, one or more of which is irregular, in view of the fact that deletion of an irregular subdivision of a section would invalidate the offer with respect to the balance of the land in that section. 43 CFR 3210.2-1(c). This is also consistent with the rationale for the rule of approximation which is to allow applications to embrace an area which is as close to the acreage limit as the survey of the public lands with its irregularities will allow. See Ferris F. Boothe, A-28854 (August 16, 1962).

Accordingly, where a geothermal lease offer describes four complete sections and the area embraced in the application exceeds the acreage limit because one or more of the sections is irregular, the offer may be considered under the special geothermal leasing rule of approximation if deletion of the irregular section or one of them, if there is more than one, would cause an acreage deficiency (acreage limit less acreage described in the offer) greater than the excess acreage resulting from inclusion of the irregular section. See Caroline L. Hunt, supra. Under this application of the rule, appellant's offer may be considered even though it originally described acreage in excess of the 2,560-acre limitation.

The withdrawal filed by appellant was effective at the moment it was filed and is not affected by our finding that the application as originally filed was valid under the special rule of approximation described above. Caroline L. Hunt, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for further action consistent with this opinion as to the lands remaining in the application.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Martin Ritvo  
Administrative Judge

